ISMAIL BIN ISHAK v. HASHIM BIN CHE MAT & ANOR.

[A.C.J. (Gunn Chit Tuan J.) January 16, April 28, July 28 & October 1, 1980]

[Penang – Civil Appeal No. 3 of 1978]

Land Law – Adverse possession – Attributes of – Appeal on points of law – National Land Code (Penang and Malacca Titles) Act, 1963, s. 19.

This was an appeal by the appellant on points of law that he became the registered proprietor of the land in dispute through adverse possession. The Land Titles Appeal Board had reversed the decision of the Commissioner of Land Titles, Penang, that the appellant had acquired ownership of the said land through adverse possession. The Board reversed the decision and allowed the respondents' appeal on the ground that they were *bona fide* purchasers for value. The respondents had purchased the said land from the beneficiaries of the true owner who had obtained an order of distribution of the said land from the Collector of Land Revenue under the Small Estates (Distribution) Ordinance, 1955.

The appellant appealed on the following grounds:

(i) that the Board erred in law in holding that the respondents as *bona fide* purchasers had acquired a prior right to the title of the said land by registration as against the appellant who had acquired title thereto by adverse possession.

(ii) the Board erred in applying *Gibbs* v. *Messer*(1) to the facts in this case where the title to the said land had not yet become indefeasible under the provisions of the National Land Code.

(iii) the Board ought to have held on the facts of this case that the possession of the said land by the appellant had all the necessary attributes of adverse possession for the statutory period of 12 years.

(iv) that by the statutory period of 12 years, the right and title of the true owner to the land had been extinguished at the end of such period and created a title by adverse possession in favour of the appellant.

Held, allowing the appeal: (1) the appellant had acquired title by adverse possession as his possession of the said land was actual, visible, exclusive and hostile and had continued for more than 12 years to create a bar under the Limitation Ordinance;

(2) the appellant acquired a prior right to the title of the said land because by the time the Collector of Land Revenue made the said order of distribution, the appellant had already acquired title to the land by adverse possession as against the true owner.

(3) the Board erred in applying *Gibbs* v. *Messer*(1) where the facts are different and where the statutory provisions were very different from those in the National Land Code (Penang and Malacca Titles) Act, 1963;

(4) the Commissioner of Land Titles, Penang may proceed to issue the appellant with the replacement title or endorse the replacement interest of the appellant on the Interim Register.

Cases referred to:

(1) *Gibbs* v. *Messer* [1891] A.C. 248, 257.
(2) *Taylor* v. *Twinberrow* [1930] 2 K.B. 16, 23
(3) *Chinese Bankers Trust Co. Ltd.* v. *Low Cheng Kiat & Anor.* [1966] 1 M.L.J. 239, 241.
(4) *Ejas Ali Qidwai and Others* v. *Special Manager, Court of Wards, Balrampur Estate & Ors.* A.I.R. 1935, P.C. 53, 56.
(5) *Bridges* v. *Mees* [1957] 1 Ch. 475.

CIVIL APPEAL.

S. Thillaimuthu for the appellant.
Ariffin bin Haji Daud for the respondent.

Cur. Adv. Vult.

Gunn Chit Tuan J.: This was an appeal on points of law under section 19 of the National Land Code (Penang and Malacca Titles) Act, 1963, (hereinafter referred to as "the said Act") from the decision of the Land Titles Appeal Board, Penang (hereinafter referred to as "the said Board") dated September 12, 1973 reversing a decision of the Commissioner of Land Titles, Penang, dated August 14, 1972, which he made after an enquiry held by him under section 54 of the said Act in respect of the claim of one Ismail bin Ishak (hereinafter referred to as "the appellant") to a piece of land in Bukit Mertajam, namely, Holding No. 564, Mukim 4, Province Wellesley Central (hereinafter referred to as "the said land"). As a result of the enquiry, the Commissioner found that the said land was purchased by the appellant in the month of July 1948 from one Mat Soam bin Senawi, the grandson and one of the beneficiaries of one Mat Khamis bin Japan, since deceased, who became the registered proprietor of the said land in 1894 by a deed registered No. 2851/1894. Since the purchase in 1948 the appellant has been in possession of the said land and has also erected a dwelling house on it in the year 1949 which he has been occupying until the present day. The said land has been planted with coconut trees and the proceeds therefrom have also been enjoyed by the appellant who has been paying all Government dues. The appellant has also not been paying rent to anyone.

After advertisement of the appellants's claim by notices in the relevant form, an objection was received from one Hashim bin Che Mat and one Cik binti Zakaria (hereinafter referred to as "the respondents"). The respondents' objection to the appellant's claim under section 53 of the said Act was that they had purchased the said land from the beneficiaries of the said Mat Khamis bin Japan, that is, Abdullah bin Mat Soam, Basah binte

Mohd. Soam, Zabidah binte Mohd. Soam and Halimah binti Mohd. Senawi, who had on April 29, 1970, obtained an order of distribution of the said land from the Collector of Land Revenue, Bukit Mertajam, under the Small Estates (Distribution) Ordinance, 1955. Those four beneficiaries sold the said land to the respondents for $1,500 and a transfer in Form 14A of the National Land Code, 1965, dated March 30, 1971 was registered on May 31, 1971.

During the enquiry held by the said Commissioner in 1972, the respondents stated that they were aware that the said land which they had purchased from the beneficiaries of Khamis bin Japan was occupied by the appellant but they did not enquire whether the appellant had been in long possession. The said Commissioner found after inquiry that the ground of objection of the respondents was not sufficient for him to reject the claim of the appellant, and he therefore decided to repeal the said transfer dated March 30, 1971, of the said land. He also ordered that the name of the appellant be registered as the proprietor of the whole of the said land.

The respondents then appealed under section 15 of the said Act against the decision of the Commissioner in respect of the said land and the said Board heard the appeal in 1973. On September 12, 1973, the said Board allowed the respondents' appeal on the ground that the respondents were *bona fide* purchasers for value. The written judgment of the Chairman of the said Board is dated September 24, 1974 but there is a note to the judgment whereby the said Board regretted the delay in forwarding its grounds of decision and the fact that the appeal records were not ready for service on the appellant's solicitors until May 10, 1978 because the previous secretary of the said Board had inadvertently misplaced the relevant file which was missing for more than a year!

Be that as it may, the appellant appealed to the High Court against the whole of the decision of the said Board on the following grounds:–

"1. The Land Titles Appeal Board erred in law in holding that the respondents as *bona fide* purchaser of land, namely Holding No. 564, Mukim 4 Seberang Perai Tengah had acquired a prior right to the title of the said land by the transfer registered on May 31, 1971 as against the appellant who had acquired title thereto *by adverse possession.*

2. The Land Titles Appeal Board erred in law in applying the law enunciated in the Privy Council case of *Gibbs* v. *Messer*[1] to the facts in this case where the title to the said land had not yet become indefeasible under the provisions of the National Land Code.

3. The Land Titles Appeal Board ought on the facts of this case to have held in law, as the Commissioner for Land Titles Penang did, that the possession of the said land by the appellant had all the necessary attributes of adverse possession for the statutory period of 12 years.

4. The Land Titles Appeal Board ought on the facts of this case to have held in law, as the Commissioner for Land Titles Penang did, that the appellant had acquired title to the said land by adverse possession for the statutory period of 12 years so that the right and title thereto of true owner had been extinguished at the end of such period and created a title by adverse possession in favour of the appellant."

Mr. Thillaimuthu, who appeared for the appellant, pointed out that the said Act came into force in the State of Penang on January 1, 1966, and he then referred to the following definitions in section 4 of the said Act:–

"Interim Register" means the register prepared and maintained under Chapter 3 of Part III;

"pre-existing interests" means all interests, rights, titles and estates (not being interests, rights, titles or estates vested in the Governor or the Government of the State) subsisting immediately before the appointed day in any land in the State, including any title therein acquired by adverse possession or operation of law or under any unregistered pre-existing deed.

"Replacement title" or "replacement interest" means a title or interest, as the case may be, in any holding to which any person is entitled under, and which has been entered on the Interim Register in accordance with the provisions of Part IV;

As regards the first ground of appeal, counsel referred to section 44 of the said Act concerning title by adverse possession which reads as follows:–

"Where any pre-existing interest in a holding has been acquired by adverse possession and the right of action accruing in respect of such possession has been barred by the provisions of the Limitation Ordinance, 1953, then such form of replacement title as is referred to in section 39 shall be issued, or such replacement interest shall be endorsed on the appropriate folio of the Interim Register, as the Commissioner may consider appropriate to accord due recognition to such interest.",

and contended briefly that the Board had therefore erred in holding that the respondents had acquired a prior right to the title of the said land as against the appellant. Counsel then pointed out, with regard to the second ground of appeal, that the Privy Council case of *Gibbs* v. *Messer*[1] quoted by the said Board dealt with the case of a title which was already indefeasible. The facts of that case are briefly as follows. During the absence in England of one Mrs. Messer from the State of Victoria her Attorney, Cresswell, forged a transfer

of her lands to one Hugh Cameron (a fictitious name fraudulently assumed by him to cover up forgery or, as the Privy Council said, it was not an alias of Cresswell's but a fiction or puppet created by him) and obtained the usual duplicate certificate in Hugh Cameron's name. He then mortgaged the land to McIntyre under a deed purporting to be executed by Cameron and he himself attested the instrument as a subscribing witness. An action was brought by Mrs. Messer for cancellation of the certificate in the name of Hugh Cameron and also for the issue to her of a new certificate of title free from the incumbrance of McIntyre's mortgage. The question was which of the two innocent parties must suffer. Lord Watson in delivering the judgment of the Board said:—

"Although a forged transfer or mortgage, which is void at common law, will, when duly entered on the register, become the root of a valid title in a *'bona fide'* purchaser by force of the statute, there is no enactment which makes indefeasible the registered right of the transferee or mortgagee under a null deed. The McIntyres cannot bring themselves within the protection of the statute, because the mortgage which they put upon the register is a nullity. The result is unfortunate, but it is due to their having dealt, not with a registered proprietor, but with an agent and forger, whose name was not on the register, in reliance upon his honesty. In the opinion of their Lordships, the duty of ascertaining the identity of the principal for whom an agent professes to act with the person who stands on the register as proprietor, and of seeing that they get a genuine deed executed by that principal, rests with the mortgagees themselves; and if they accept a forgery they must bear the consequences".

Counsel pointed out that that case involved a piece of land in Victoria where the Torrens system of land tenure was in force as in the States of Malaya (other than in Penang and Malacca). He stated that under the Torrens system, the title of land was treated as indefeasible upon registration and such title was paramount and a *'bona fide'* purchaser of such registered title was fully protected. He pointed out however that the beneficiaries of Mat Khamis were not registered proprietors with an indefeasible title because the States of Penang and Malacca have always had a different system of land registration similar to that in England. The said Act contained transitional provisions for the introduction of a uniform system of registration of titles to land into the States of Penang and Malacca to bring into conformity with the system in the other States of Malaya. The transitional provisions applied to the two States of Penang and Malacca for "conversion" of the existing system to the Torrens system. Under section 38 of the said Act, title by adverse possession could not be claimed from and after the appointed day i.e. January 1, 1966, but the prohibition did not affect the right of any person to claim of title by adverse possession by virtue of section 53 of the said Act where such claim had ripened by adverse possession for twelve years before the appointed day. Counsel also pointed out that even if the respondents had been registered as proprietors in the Interim Register, their title had not become indefeasible under Part VII of the said Act read together with section 59 of the Act and the Limitation Ordinance 1953. Counsel then referred to the grounds of judgment of the said Board and pointed out that the Chairman of the said Board had not overruled any of the Commissioner's findings in this case. He pointed out in particular that the Chairman of the said Board had not upset the finding of the Commissioner that the appellant in this case went into possession of the said land in 1948 after he had bought it from the said Mat Soam bin Senawi and had erected a house on the said land since then, and the fact that the appellant has been living on the said land itself was the strongest visible evidence of adverse possession.

On the attributes of adverse possession in law, Mr. Thillaimuthu referred to the following passages appearing in pages 1369 and 1371 of Volume 2 of *Rustomji* on Laws of Limitation (5th Edition):—

"Adverse Possession: Must be "Hostile," "Notorious" and "Exclusive." — No matter in what jurisdiction the determination of what constitutes adverse possession may arise, the decisions and text-books are unanimous in declaring that the possession must be actual, visible, exclusive, hostile, and continued during the time necessary to create a bar under the statute of limitation. Whenever any of these elements is lacking, no title by adverse possession can ripen. An adverse possession must not be a mere trespass. It must be visible and notorious, and exclude the exercise of ownership by the other party, and must be hostile in such sense as to indicate intent to occupy exclusively. The possession taken by the wrongdoer must be hostile or adverse in its character, importing a denial of the owner's title in the property claimed; otherwise, however open, notorious, constant, and long-continued it may be, the owner's action will not be barred."

"Adverse Possession: Possession Obtained by Consent of Owner, when Adverse — Though it is an elementary principle of law that a person's possession cannot be deemed to be adverse to another when he enters upon it with his consent, under certain circumstances possession though obtained by consent of the owner may nevertheless be adverse to him. Thus, where in an intended sale, which can be effected in law only by a registered document, no such document is executed and yet the intending purchaser gets possession, he gets possession with the consent of the intending vendor; but, nonetheless, the purchaser's possession begins adversely to the vendor. He begins to claim under a proprietary title (i.e. as purchaser), although, as a matter of law, no title as owner accrued to him (for want of

a registered instrument). If the intending purchaser be fortunate enough to continue, undisturbed by the vendor, in possession for 12 years, he would acquire a perfect title as against the former owner, the vendor."

Counsel also referred to section 9(1) of the Limitation Ordinance, 1953, which is as follows:—

"No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him, or if it first accrued to some person through whom he claims, to that person.",

and on the effect of a statute providing for the limitation of actions (relating to adverse possession) on the right of a person in adverse possession for the statutory period, he referred to the following passage in the judgment of Scrutton L.J. in *Taylor* v. *Twinberrow*(2):—

"The result of this case is in my opinion correctly stated in Darby and Bosanquet's Statutes of Limitations, 2nd edition, page 493, as follows: "It has been said that the effect of the statute is to execute a conveyance to the person in possession, and not only to extinguish the right of the former owner, but to transfer the legal fee simple. But the truer view is, that the operation of the statute in giving a title is merely negative; it extinguishes the right and title of the dispossessed owner, and leaves the occupant with a title gained by the fact of possession, and resting on the infirmity of the right of others to eject him."

Mr. Thillaimuthu then pointed out that the Chairman of the said Board had merely expressed a doubt whether the uninterrupted possession of the said land by the appellant for 20 years, as found by the Commissioner, had the attributes of adverse possession. Counsel contended that the requisites for adverse possession in law as stated in the decision of Ismail Khan J. (as he then was) in *Chinese Bankers Trust Co. Ltd.* v. *Low Cheng Kiat & Anor.*(3), which was quoted by the said Board in its decision, were present in this case. In the above-quoted case, Ismail Khan J. (as he then was) said as follows:—

"Possession, to be adverse "must be actual, visible, exclusive, hostile and continued during the time necessary to create a bar under the Limitation Ordinance. When any of these elements is lacking no title by adverse possession can ripen." (See *Rustomji* on Law of Limitation, 5th edition, page 1369).

In *Ejas Ali Qidwai and others* v. *Special Manager, Court of Wards, Balrampur Estate and others*(4), Sir Shadi Lal said at page 56:—

"The principle of law is firmly established that a person, who bases his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed."

It was submitted by Mr. Thillaimuthu that the appellant's possession of the said land had all the attributes of adverse possession of the highest degree for the requisite length of time i.e. the possession of the appellant on the facts of the case was actually visible, exclusive, hostile and continued for a period of more than twelve years. The house which he had erected on the said land was undoubtedly visible. He lived on the land to the exclusion of the "real owner". He planted coconut trees, paid Government dues and none of the so-called beneficiaries or any other person had interferred with his possession from the period 1948 until the time the present litigation with the respondents began in 1972. Counsel concluded that the right and title of the real owner i.e. the estate of Mat Khamis bin Japan (deceased) has been extinguished by adverse possession on the part of the appellant by virtue of sections 9, 15 and 18 of the Limitation Ordinance, 1953, long before the respondents purported to purchase the said land. Finally, counsel contended that there was no provision in any law requiring anyone who had acquired title by adverse possession to register his interest.

Mr. Ariffin, counsel for the respondents, stated that the findings of fact by the Commissioner were accepted but he nevertheless contended that the appellant had not acquired any right to the said land by adverse possession. He too referred to the above-quoted passage of Ismail Khan J.'s judgment in the *Chinese Bankers Trust Co. Ltd.* v. *Low Cheng Kiat & Anor.*(3) and submitted that the attributes of adverse possession were not present in this case because the appellant's possession was by virtue of an agreement and as such was not hostile. He said that even assuming that the appellant had acquired the said land by adverse possession, then title to it should have been issued or such interest should have been endorsed in the Interim Register by the Commissioner under the above-quoted section 44 of the said Act. Counsel argued that as no action had been taken by the Commissioner under section 44 of the said Act in respect of the appellant's claim to have acquired an interest in the said land by adverse possession before his clients' interests were registered, the registration had divested any existing interest and vested title in the respondents by virtue of section 215 of the National Land Code.

Mr. Ariffin also briefly referred to the case

of *Bridges* v. *Mees*[5]. In that case the plaintiff and the defendant owned and occupied adjoining dwelling-houses purchased from the same company. On April 6, 1936, the plaintiff contracted orally with the company to purchase a small piece of land at the rear of both properties for £7. He paid £2 and went into possession of the land; the property was registered but no caution was put on the registration in respect of the oral contract. By 1937 he had paid all the purchase money. In 1955 the defendant purchased from the liquidator of the company (which was then in liquidation) the same piece of land for £5, the liquidator only convenanting for the title as trustee. On April 13, 1956, the defendant registered his title in the proprietorship register of the Land Registry. He then claimed possession of the land from the plaintiff. The plaintiff in an action asked for a declaration that he was the beneficial owner of the land and for rectification of the register on the ground, *inter alia*, that he had an overriding interest in the land having rights "acquired ... under the Limitation Acts" and of a "person in actual occupation of the land" within the meaning of section 70 of the U.K. Land Registration Act, 1925. It was held that one of the overriding interests recognised was that of a squatter in adverse possession for the minimum statutory period and that the proprietor for the time being whose right to sue for possession was extinguished was constituted a statutory trustee for the squatter and consequently a registered purchaser for value took it subject to the claim of the squatter and the registrar was required, on being satisfied as to the latter's title, to enter him as proprietor but without prejudice to any estate or interest protected by any entry on the register which may not have been extinguished. The statutory proprietor was thus deprived of his beneficial interest, if any, in the land.

Counsel then referred to the above-quoted passage on adverse possession appearing on page 1371 of Vol. 2 of *Rustomji* on Laws of Limitation (5th edition). He stated that that was a correct statement of the law but contended that it was not applicable to the present case because there was no "intended sale". The appellant was not an "intending purchaser" as he had already bought the said land and was allowed into possession by virtue of a sale and that until the consent of the vendor was withdrawn his possession was permissive and not hostile. Mr. Ariffin also referred to the said order of distribution obtained on April 29, 1970 from the Collector of Land Revenue, Bukit Mertajam, and pointed out that the respondents had bought the said land from the lawful owners. But he also asked the court to assume that when the said Mat Soam bin Senawi sold the land to the appellant, the former had the right to sell and to grant permission to the appellant to take possession of the said land. Finally, Mr. Ariffin concluded by referring to sections 58 and 59 of the said Act which are as follows:—

"58. Where any person is under the provisions of this Act registered as the proprietor of any holding in the Interim Register such person shall be deemed to hold the replacement title thereto under and subject to the provisions of this Act; and such person shall hold such holding free from all pre-existing interests and encumbrances except such as may be entered in the Interim Register but subject to:

(a) any pre-existing easement, or public right of way recognised under this Act;

(b) the power to correct errors in the Interim Register conferred on the Commissioner by section 34;

(c) the right of any person in occupation of the holding or any part thereof immediately before the appointed day under any lawful tenancy thereof."

"59. Nothing in section 58 shall be held to prejudice the rights and remedies of any person:

(a) to have the registered title of a proprietor defeated on the ground of fraud or forgery to which such proprietor or his agent was a party or in which he or his agent colluded; or

(b) to enforce against a proprietor any contract to which that proprietor was a party; or

(c) to enforce against a proprietor who is a trustee the provisions of a trust; or

(d) to recover from a proprietor any holding or any part thereof acquired by him from a person under a legal disability which was known to the proprietor at the time of dealing; or

(e) to recover from a proprietor any holding or any part thereof which has been lawfully acquired by him in purported exercise of any power or authority conferred or created by any written law; or

(f) to enforce any judgment or award of any court affecting any land made or given before the appointed day;

or arising by virtue of the operation of the Limitation Ordinance, 1953, or to confer on a proprietor claiming otherwise than as a purchaser any better title than was held by his immediate predecessor."

It was his submission that only section 58 was applicable whereas section 59 was not applicable to the facts of this case.

With respect to the contention of Mr. Ariffin, I considered that on the facts as found by the Commissioner, the appellant had gained possession of the said land not from the real owner which was the estate of Mat Khamis bin Japan (deceased) but

from one who had no title to sell it to him. The appellant's possession of the said land was, therefore, hostile and constituted adverse possession in law. On the facts found by the Commissioner the appellant's possession was actual, visible, exclusive and hostile and had continued for more than twelve years to create a bar under the Limitation Ordinance. By the time the Collector of Land Revenue, Bukit Mertajam made the said order of distribution without presumably having made a proper and exhaustive enquiry, and when the respondents purported to buy the said land in 1971 from the said four beneficiaries of Mat Khamis bin Japan, the appellant had already acquired a title to it by adverse possession as against the real owner, namely the estate of Mat Khamis bin Japan (deceased).

I also considered that the title of the appellant to the said land which he had acquired by adverse possession was not affected because no action had been taken yet by the Commissioner under section 44 of the said Act to issue him with a replacement title or to endorse his replacement interest on the appropriate folio of the Interim Register. Even if *Bridges* v. *Mees*[5], which was quoted by counsel himself could be resorted to, it could be argued that when the appellant in this case acquired a title by adverse possession in the said land the real owner at that time i.e. the estate of Mat Khamis bin Japan was at most, if at all, a statutory trustee for him and that when the respondents bought the said land from the beneficiaries of Mat Khamis bin Japan and had it registered under section 215 of the National Land Code, they did not acquire any prior interest to that of the appellant. With respect I also did not agree with Mr. Ariffin's contention that only section 58 and not section 59 of the said Act was applicable in this case. The provisions of the said Act must be read together and it is clear from the provisions of section 59 of the said Act that nothing in section 58 shall be held to prejudice the rights of any person such as the appellant arising by virtue of the operation of the Limitation Ordinance, 1953. I agreed with the submissions of learned counsel for the appellant that the said Board had erred in applying the law enunciated in *Gibbs* v. *Messer*[1] where the facts are different and which was in any case a decision under the Victorian Transfer of Land Statute the provisions of which are very different from those in the said Act. As I was satisfied that the said Board had erred in its decision, I therefore allowed the appeal with costs and held that the Commissioner was right to confirm the claim of the appellant under section 53 of the said Act and that he may proceed to issue the appellant with the replacement title or endorse the replacement interest of the appellant on the appropriate folio of the Interim Register.

Appeal allowed.

Solicitors: *Thillaimuthu & Phock Kin; Ariffin & Co.*

CHIEW SZE SUN v. MUTHIAH CHETTIAR

[O.C.J. (Abdul Razak J.) March 23, 1981]

(Seremban – Originating Motion No. 118 of 1980)

Land Law – Caveat – Lien-holder's caveat created earlier than private caveat – Whether private caveat should have been rejected – National Land Code, 1965, ss. 327(1), 330(5) & 322(2).

This was an application to set aside an *ex-parte* order extending the period of a private caveat entered by the respondent on a piece of land and to order the Collector of Land Revenue, Seremban to cancel the said caveat entered against the land. In this case, the applicant had entered a lien-holder's caveat on the said land to protect his lien arising from a loan of $370,000 granted by him to one Letchumanan in which the latter had deposited the title deed with the applicant's solicitors. Subsequently, in pursuance of an agreement made by the respondent with Letchumanan, the former entered a private caveat on the same piece of land. The applicant accordingly applied to the Collector of Land Revenue to remove the respondent's caveat but the respondent applied for and obtained an extension of the private caveat until further order.

Held, allowing the application: in the light of sections 322(2) and 330(5) of the National Land Code, 1965 the lien-holder's caveat, being created first in point of time, prohibited the private caveat from being entered on the register document of title. The Collector of Land Revenue should have, having had the lien-holder's caveat endorsed on the document of title, rejected the private caveat.

ORIGINATING MOTION.

George Chelvaraj Proctor for the applicant.
M. Muthu Palaniyappan for the respondent.

Cur. Adv. Vult.

Abdul Razak J.: This Originating Motion seeks to set aside the *ex-parte* order made on August 21, 1980 in Originating Summons No. 94 of 1980 and to order the Collector of Land Revenue, Seremban to cancel the private caveat entered against the land held under E.M.R. 352 Lot 1051 and E.M.R. 526 Lot 900 Mukim of Rasah, Seremban (herein